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                IN THE UNITED STATES DISTRICT COURT
                FOR THE NORTHERN DISTRICT OF IOWA
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3
    UNITED STATES OF AMERICA,
4
                  Plaintiff,
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                                     20-CR-6
        VS.
6
    ROMEL MURPHY,
                                     REDACTED TRANSCRIPT
7
                  Defendant.
8
9
                            APPEARANCES:
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    ATTORNEY KYNDRA LUNDQUIST, U.S. Attorney's Office,
    111 Seventh Avenue S.E., Box 1, Cedar Rapids, Iowa 52401,
    appeared on behalf of the United States.
11
12
    ATTORNEY JEFFREY B. STEINBACK, 8351 Snaresbrook Road,
    Roscoe, Illinois 61073, appeared on behalf of the
13
    Defendant.
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15
                        SENTENCING HEARING,
16
               HELD BEFORE THE HON. C.J. WILLIAMS,
    on the 20th day of October, 2021, at 111 Seventh Avenue
17
    S.E., Cedar Rapids, Iowa, commencing at 1:05 p.m., and
18
19
    reported by Patrice A. Murray, Certified Shorthand
2.0
    Reporter, using machine shorthand.
2.1
    Transcript Ordered: 12/3/21
    Transcript Completed: 1/2/22
22
23
                 Patrice A. Murray, CSR, RMR, FCRR
                          Court Reporter
24
                            PO Box 10541
                     Cedar Rapids, Iowa 52410
25
                    PAMurrayReporting@gmail.com
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The matter now before the Court is 2 THE COURT: 3 United States of America versus Romel Murphy, Criminal Case Number 20-CR-6. This matter comes on for a 4 5 sentencing hearing. The United States is represented by Assistant United States Attorney Kyndra Lundquist. 6 The 7 defendant is personally present and represented by attorney Jeffrey Steinback. Also participating by 8 telephone is United States Probation Officer Beth 9 10 Sanchez. She is the author of the presentence 11 investigation report filed at document number 44 in the 12 court's file. It is now 1:06 p.m. This hearing was set for 1:00 13 this afternoon. The record will reflect the defendant 14 15 was present in the courtroom on time. His attorney, 16 Mr. Steinback, arrived late. That will be a matter I 17 take up with Mr. Steinback at a later time. 18 Ms. -- I'm sorry. On January 8, 2021, the defendant pled guilty to one count of a seven-count indictment. 19 2.0 The defendant pled guilty to Count 4, which charged him with the crime of wire fraud. This was in violation of 2.1 22 Title 18 United States Code Section 1343. 23 By statute, that crime is punishable by up to 24 20 years in prison without the possibility of parole. 25 After the defendant has served his prison sentence, the

(The following proceedings were held in open court.)

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    Court can place him on a term of supervised release for
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    up to 3 years. Probation is an option; and were the
    Court to impose probation, it would be for a term of 1 to
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              The Court can impose a fine of up to $250,000.
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    Restitution is at issue in this case.
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                                            And the Court --
    and it's mandatory restitution. And the Court must
 6
7
    impose a mandatory special assessment of $100.
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         Ms. Lundquist, on behalf of the United States, have
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    you had a full and fair opportunity to review this
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    presentence report?
                              Yes, Your Honor.
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              MS. LUNDQUIST:
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              THE COURT:
                          And does the government have any
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    objections to the calculation of the advisory quidelines
    in this case?
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              MS. LUNDQUIST:
                               No, Your Honor.
              THE COURT:
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                           I noted that you did have some
    objections at paragraphs 10 through 22 of the offense
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18
    conduct section. Also, there's an objection at
    paragraphs 70 and 71, having to do with conduct not part
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2.0
    of the criminal defense -- or, I'm sorry, criminal
2.1
    offense; and then at paragraph 155, having to do with
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    restitution.
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         Regarding the offense conduct objections, do you
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    believe the Court needs to rule on any of those
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    objections here today?
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1 MS. LUNDQUIST: No, Your Honor. 2 THE COURT: What about the conduct not part of 3 the offense conduct, do I need to rule on your objections 4 there? 5 MS. LUNDQUIST: Your Honor, the government is 6 not seeking a ruling on that. 7 All right. I understand from an THE COURT: 8 e-mail directed to me, in which the defendant was copied, 9 that the parties have resolved the restitution issues in 10 By my calculation, we have total restitution this case. 11 in the amount of \$411,908.23. Is that your calculation 12 as well? 13 MS. LUNDQUIST: Your Honor, in reviewing the 14 table that the government sent to the Court in advance of 15 the hearing, as well as the offense conduct section, I 16 believe there is a typo in the table with respect to the 17 restitution owed to which is in paragraph 38 of the offense conduct section; and then the 18 19 table in the PSR is at paragraph, I think, 155. 2.0 looking at those two, there is an inconsistency, in that 2.1 it is 32.5 from the offense conduct, and 35.5. And that 22 was inadvertently replicated in the table that the 23 government sent to the Court. 24 THE COURT: All right. So that would make it 25 500 -- I'm sorry, \$410,908.23?

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              MS. LUNDQUIST: I believe that's correct, Your
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    Honor.
                          All right. All right.
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              THE COURT:
         Mr. Steinback, on behalf of the defendant, have you
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    and your client had a full and fair opportunity to review
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    this presentence report?
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                               Yes, Your Honor.
              MR. STEINBACK:
                           I noted the defendant had a number
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              THE COURT:
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    of objections. He had objections at paragraphs 3B and
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    155, having to do with the summary of the plea agreement.
11
         He had objections at paragraphs 3E, 10 through 18,
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    61, and 132, having to do with loss and restitution
13
    calculations.
14
         Paragraphs 10 through 22 of the offense conduct
15
    section.
         Paragraph 53, having to do with victim impact.
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         Paragraph 109, having to do with his history of
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18
    gambling.
         And paragraph 121, having to do with his employment.
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20
         Are those all the objections the defendant has to
2.1
    the presentence report?
22
                               Yes, Your Honor.
              MR. STEINBACK:
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              THE COURT:
                           I understand from, again, the
24
    pleadings by the parties that the parties have resolved
25
    the guideline issues in this case. They've resolved the
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1 restitution issue. Do you believe the Court needs to 2 rule on any of your objections here today? MR. STEINBACK: No, I do not believe the Court 3 needs to rule on any of those objections, no, sir. 4 5 THE COURT: Okay. Very good. Could you make a 6 brief record of how you went through this report with 7 your client, sir? 8 MR. STEINBACK: I'm sorry, Your Honor? 9 THE COURT: Could you make a record of how you 10 went through this presentence report with your client? 11 MR. STEINBACK: Yes, sir. Your Honor, Romel 12 Murphy and I went through this report more in a piecemeal 13 fashion than in an entirety. We reviewed the offense 14 conduct section first, aspects of it. And then we talked 15 about his financial circumstances. And then we went and 16 talked about his criminal history. We also talked about 17 some aspects of what was reflected in his background, Thereafter, we talked about the -- the 18 growing up. 19 quideline calculations. Each of those conversations and 2.0 several others were conducted by phone. Some would take five minutes. Some would take an hour and five minutes. 2.1 22 But overall, probably in the course of 15 or 20 23 conversations, we covered every aspect of the presentence 24 report. 25 THE COURT: Very good. Thank you, sir.

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         Ms. Lundquist, I neglected -- I should have asked
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    this early on. Is the government going to have any
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    objection to the defendant's self-surrender, or is the
    government asking for detention at the end of this
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5
    hearing?
              MS. LUNDQUIST: The government does not object
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7
    to self-surrender, Your Honor.
                           All right. I'm going to go ahead
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              THE COURT:
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    and excuse then the deputy marshals here. They have
10
    better work to do here today. You're welcome to stay if
11
    you wish, but your presence is not needed. You may
12
    leave.
13
         All right. Mr. Murphy, have you been able to review
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    this presentence report on your own, sir?
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              THE DEFENDANT:
                              Yes, Your Honor.
16
                           And do you feel like you've had
              THE COURT:
17
    sufficient time to go through this report with your
    attorney?
18
19
              THE DEFENDANT:
                               Yes, Your Honor.
2.0
                          Whenever you spoke with
              THE COURT:
2.1
    Mr. Steinback about this report, was he able to answer
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    any questions you had about it?
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              THE DEFENDANT:
                              Yes, Your Honor.
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              THE COURT:
                           Do you have any questions today
25
    about this report?
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THE DEFENDANT: No, Your Honor.

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THE COURT: All right. Very good. Let's go ahead and start then by going through the calculation of the advisory guidelines as determined by the probation office. That calculation begins at page 16. At paragraph 56, the probation office has assessed the defendant with a base offense level of 7. This is under guideline section 2B1.1(a)(1).

At paragraph 57, the probation office has assessed the defendant with a 12-level enhancement for loss amount -- the loss amount has been calculated at 410,582 -- under guideline section 2B1.1(b)(1)(G). This falls within the range of more than \$250,000 but less than \$550,000, resulting in the 12-level enhancement.

At paragraph 58, the probation office has assessed the defendant with a 2-level enhancement because the offense involved 10 or more victims. This is under guideline section 2B1.1(b)(2)(A)(i).

At paragraph 59, the probation office has assessed the defendant with a 2-level enhancement because the offense otherwise involved sophisticated means, and this is under guideline section 2B1.1(b)(10)(C).

At paragraph 61, the probation office has assessed the defendant with a 3-level enhancement -- this is under guideline section 3B1.1(b) -- because the defendant was a

manager or supervisor and the criminal activity otherwise was extensive. This results in an adjusted offense level of 26.

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The defendant has pled guilty to this offense, so the probation office has awarded the defendant with a 2-level reduction for acceptance of responsibility under guideline section 3E1.1(a). And, Ms. Lundquist, what is the government's position about whether the defendant should receive an additional 1-level reduction for acceptance under guideline section 3E1.1(b)?

MS. LUNDQUIST: The government does not make the motion for the third level, Your Honor, as agreed to in our plea agreement.

THE COURT: With 2 levels off then for acceptance of responsibility, the defendant's total offense level is 24.

The defendant has some criminal history, which the probation office has summarized and scored beginning at paragraph 72 and carrying over to paragraph 80. The defendant's prior convictions have resulted in 9 criminal history points. That places the defendant in criminal history category IV. So with a total offense level of 24, criminal history category IV, the advisory guideline range of imprisonment is 77 to 96 months.

In preparation for today's hearing, I have reviewed

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    in detail, of course, this presentence investigation
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    report. I've also reviewed the pleadings by the parties.
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    The government filed a sentencing memorandum at
                 At document number 49, the defendant filed
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    document 48.
5
    a sentencing memorandum and a motion for a downward
    variance. At documents 50 through 51, the defendant
 6
7
    filed letters of support.
                               I believe there are 15 of them
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    in total; I have reviewed those. At document number 52,
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    the defendant -- I'm sorry, the government filed a
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    resistance to the motion for a downward variance.
                                                        And
    then at document number 60, the defendant filed another
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12
    letter of support.
13
         Ms. Lundquist, have I identified all the relevant
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    pleadings, documents, and exhibits pertinent to today's
15
    hearing?
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              MS. LUNDQUIST: You have, Your Honor.
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              THE COURT:
                          And, Mr. Steinback, do you agree?
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              MR. STEINBACK: I agree, Your Honor.
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                          All right.
                                      Ms. Lundquist, this is
              THE COURT:
2.0
                   Do any victims wish to address the Court
    a victim case.
2.1
    during the course of this hearing?
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              MS. LUNDOUIST: Yes, Your Honor.
              THE COURT:
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                          All right.
                                      Here's the direction
24
    I'd like -- or the order in which I'd like to proceed
25
           I'd like to hear first from the victim in this
    then.
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           There is a pending motion for a downward variance.
2
    It is the defendant's motion, but it's my practice in
 3
    this courtroom to hear first from the government on a
    motion for a downward variance and the sentence the
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    government believes is appropriate because that then
    gives the defense counsel an opportunity to not only make
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    his own argument but respond to the government's argument
    as well; and then I will hear from Mr. Murphy if he
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    wishes to say anything to me; and then I will impose
10
    sentence.
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         Ms. Lundquist, is that order acceptable to you?
                               Yes, Your Honor.
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              MS. LUNDQUIST:
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              THE COURT:
                          Mr. Steinback?
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              MR. STEINBACK:
                               Yes, Your Honor.
                                                  I was
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    wondering, Your Honor, if the Court would permit my
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    client to speak first in allocution, and for me to make
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    my arguments in mitigation thereafter.
                           Any objection to that,
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              THE COURT:
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    Ms. Lundquist?
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                               No, Your Honor.
              MS. LUNDQUIST:
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              THE COURT:
                          All right. We'll proceed in that
22
    order then. All right.
                              So let's hear first from the --
23
    any victim who wishes to address the Court here today.
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    And we can have him come up and sit at counsel --
    government counsel table.
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1 approached the well of the courtroom and 2 sat at counsel table.) Good afternoon, sir. 3 THE COURT: Good afternoon. 4 5 THE COURT: Please be seated. I want you to be And just if you can come up to that comfortable. 6 7 microphone. Perfect. 8 And then just state your name and I'm happy to hear 9 anything you'd like to say. 10 So it's My name is 11 It's been three years since all this took place. 12 I've done a lot of forgiving in general. I'm still 13 paying 3,000 a month. I've got like 14 to 15 months left 14 to pay off this total. But me, personally, I think you 15 should give the guy a downward variance. I think it's --It still sucks. 16 I -- it's a bad crime. It still hurts 17 to pay these things. But it's a lot of time in prison for -- for this. That's just my opinion. 18 He's lied to me millions of times. 19 He's done 2.0 nothing good for me. But if he has kids or whatever it 2.1 may be, I just don't -- it's a long time in prison. 22 does hurt me to pay the money every month. It was awful 23 living -- I feel like I got ten years older over this 24 time frame waiting for this person to answer the phone 25 and tell me I have this contract, or this, or this, or

1 It was all lies. But, personally, it's just a 2 long time, the months you said, the time that -- in that variance, that he -- he would be sentenced to. 3 say be kind. And that would be it, Your Honor. 4 5 THE COURT: All right. Thank you very much. Ι 6 appreciate your comment. 7 Thank you. 8 THE COURT: Any other victims who wish to 9 address the Court? 10 No, Your Honor. MS. LUNDQUIST: 11 THE COURT: All right. Very good. 12 And so, Ms. Lundquist, I'm happy to hear from you 13 now regarding the sentence you believe is appropriate and 14 your response to the defendant's motion for a downward 15 variance. 16 MS. LUNDQUIST: Thank you, Your Honor. The 17 United States asks the Court to deny defendant's motion 18 for a downward variance and impose a sentence within the 19 guidelines range. Looking at the nature and 2.0 circumstances of this offense, defendant defrauded the 2.1 victims in this case to obtain money to gamble. 22 induced them to send him money with fraudulent concerts

that were designed to make his representations about

being able to book these artists legitimate. He used

fake wire transfer forms to make it look like he had sent

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payments to artists when he had not. And every time he did this, he was causing these victims to make arrangements for concerts that he knew were not going to occur. A lot goes into concerts of this nature: Venues, lighting, sound, ticket sales, advertising. And as the dates would approach, as reflected in the offense conduct section, after the shows had been advertised, the victims would find out that no communications had been had with the artists, usually through cease and desist letters or the actual representatives of the artists contacting the victims to say that the shows were not legitimate.

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That information did not come from defendant. Не left all the fallout for the victims. And that included potential harms to their business reputations as these shows were advertised and then abruptly canceled. Frequently, even after the shows had been canceled, defendant would continue to lie by sending false wire transfer forms again to make it look like he had sent repayments back to the victims, when again he knew very well that he had not. This was a national and even international fraud, as two of the victims were in Australia. It went on for months, and it was still going on at the time the defendant was interviewed by the FBI in February of 2019. As reflected in paragraph 47 of the PSR, defendant received \$10,000 from a victim in

March 2019, a month after -- or several weeks after the interview with the FBI.

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Defendant relies on his representations regarding a gambling addiction as a mitigating reason for his offense. But this fraud was calculated, and it involved the creation of all these false documents. And, again, it spanned months. It wasn't a situation where defendant was legitimately in possession of some money, went into a casino that he happened to be passing, and blew it. This was money that he lied over and over to solicit and obtain and then he spent on his own recreation.

And as reflected in the PSR, he was not suffering from financial hardship at the time that he did this either. As reflected in the PSR, his actions resulted in a total loss of over \$410,000. That's just above the middle of the loss guideline range, the range of 250' to 550,000. And so the nature and circumstances of this offense are very aggravating.

Looking at defendant's history and characteristics, this is defendant's fourth federal felony case. All of them for white-collar or fraud-related offenses. That is outside the norm for these types of cases. And looking at these past offenses, there are several particularly aggravating circumstances regarding his conduct. The biggest, obviously, is that he committed two of those

previous offenses while he was on supervised release.

Paragraphs 75, 76, he committed a state forgery crime, it appears on the day he started supervised release.

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I also have to correct an error in my resistance to the downward variance. I had referenced a sentence of 30 months for the offense listed in paragraph 78; however, looking at the dates of imprisonment and going to the docket in that case, defendant received a sentence of 54 months of imprisonment because the two counts of aggravated identity theft were run consecutively.

Looking at the losses in his prior case, they were much lower than the loss that is at issue here; just over 40,000, 35,000, 2,000. His offense here went on far longer, it was greater in scope and complexity, and it involved a loss more than ten times greater than any of those in his previous cases.

Defendant was discharged from supervised release in his third case on November of 20 -- November 29, 2013.

And the offense conduct in this case began in around December 2017, so only four years later.

So his history on supervision was very poor. As I mentioned, he committed two of his prior offenses while on supervised release, and he also had other violations. He was revoked twice and sent back to prison.

Defendant's motion for a downward variance relies on

two principle bases, and the first is a gambling As noted in our brief, the guidelines state addiction. that a gambling addiction is not a reason for a downward This is a variance, not a departure; however, it's not an appropriate ground for a variance here And there is little evidence of his gambling either. addiction in the record. Looking at paragraphs 109 and 110, the probation office attempted to obtain records but was unable to do so. There's no other past medical records identifying this or diagnosing defendant with this addiction. There's one letter from a provider stating that he has a gambling addiction, only the letter, no treatment records, attendance records, no résumé or CV, no indication of her credentials or qualifications to make such a diagnosis. And all the other evidence stating that this is an addiction for him is self-reported. And that is not sufficient to carry his burden for a downward variance, especially one of the magnitude that he is seeking here.

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His second principle reason for the downward variance is his charitable works. And, again, the guidelines say that charitable works are not ordinarily relevant to a departure, and the Court knows that charitable activities are ord -- ordinarily merit any adjustment downward if they are extraordinary. And

looking at the defendant's charity work, I would note that his work began in November of 2020, less than a year ago, and that's after his offense conduct and ten months after the indictment in this case. So the entire time he's been working with that charity, he's known that at some point he would be sitting in this courtroom for a sentencing hearing at some point.

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Defendant also cites his behavior on pretrial release and restitution payments as support; however, both of those things are the expectation and not exceptional enough to warrant the downward variance that he is seeking here.

Deterrence is an especially important factor in this case, both specific and general. Looking at specific deterrence, he received previous sentences of 7 months, 18 months, then 54 months, as well as two revocation sentences of 9 months and 12 months. None of that deterred him from committing this offense, by far his most serious, less -- or around four years after being discharged from supervised release.

Defendant states that his conduct has already resulted in a certain punishment of a federal felony conviction that will affect him for the rest of his life. Well, he already had three previous federal felony convictions at the time that he committed this offense

and it did not stop him, again, from committing this offense. So there's no reason to believe that the mere fact of this conviction would deter him where three previous ones, coupled with prison sentences, did not.

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Also, looking at general deterrence, the public needs to understand that this type of fraud is very serious and having -- and committing it will end up with serious consequences. He claims the certainty of punishment will deter, not the severity of prison time. But contrary to that argument, a sentence of probation could send the message that stealing and gambling away \$410,000 of other people's money has no substantial consequences. So general deterrence also weighs heavily in favor of a sentence of imprisonment rather than supervision.

We've already discussed restitution, and the government would just ask the Court, as discussed, to award full restitution to the victims in this case and order the total amount due and payable immediately.

Finally, to address the specific sentence that the government is recommending here, defendant has 9 criminal history points. That's the top of category IV. And his loss amount is over the middle of the guidelines range for this -- for his loss range. So based on the loss amount, his prior history with these types of offenses,

1 and all of the other factors I've discussed, the 2 government recommends a sentence at the high end of the 3 quidelines range. And for all those reasons, we would ask the Court to deny defendant's motion for a variance 4 5 and impose a sentence at the high end of the range. Thank you, Ms. Lundquist. 6 THE COURT: 7 MS. LUNDQUIST: Thank you, Your Honor. 8 THE COURT: All right. At this time I'm happy 9 to hear from you, Mr. Murphy. Mr. Murphy, you don't have 10 to say anything. And if you choose not to say anything, 11 I won't hold that against you in any way. But if there 12 is anything you would like to say, now is the time to do 13 so. 14 THE DEFENDANT: Thank you, Your Honor. First 15 off, from -- I wanted to thank for his 16 recommendation, and I already have acknowledged you and the victims in this. So it -- good afternoon, Your 17 18 Honor, and to everyone in the courtroom. I want to, first of all, apologize to the victims of 19 I apologize for my actions, and I will make 20 my crime. 2.1 complete restitution, and I hope you will give me a 22 chance to show you the real Romel Murphy that stands in 23 front of you. 24 I would also like to apologize to the courts and anybody that is involved with this. 25 I want to take this

time to go through my day in my life as an addict. addiction practically destroyed me. A typical day after my car was repossessed due to this addiction, I had to live with the lie that I told my wife that it was stolen. My days consisted of me waking up at 7:00 a.m. and waking my children, up for day-care and and preschool, respectively. As my wife, Trelinda, got dressed for work, I would get my kids dressed and prepare We would leave out and I would first drop breakfast. Trelinda off at work and then the kids. Afterwards, I would begin working the phone trying to book shows and use my commissions to cover up debts from gambling. would say to myself "No casinos today." By noon, I'd have , Antwyone, and a plethora of other people texting and calling me -- some I'd answer; some I would ignore -- calling about their

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By noon, I'd have ______, Antwyone, and a plethora of other people texting and calling me -- some I'd answer; some I would ignore -- calling about their money and show bookings. I then would say to myself, "I know this Lil Wayne show is not happening," so I now have to figure out something because of the phone calls, the physical threats, and people coming by my house confronting my family and my wife about debts that I had lied to her about. So then I would scrape up any money that I could get and I would go to the casino, and I would believe, "This time I'm going to hit the casino, pay everybody back, and send the artists their money

respectively." The opposite would happen. I would leave the casino a loser again. This was a daily thing. I would cry, yell at myself, but I couldn't beat the addiction alone.

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I would leave in time to pick up ______, and Trelinda, forcing myself to pretend to be okay and lie that I had a great day with bookings, while I was crying inside looking at my wife. I've lost friends. I've lost my business. I've lost [sic] public embarrassment. My profit -- some members of my nonprofit board resigned. I almost lost my family due to the stress of this addiction.

This addiction -- this addiction was prison for me.

I live with depression, suicidal thoughts. My children

are the only reason that I still stand here today because
I couldn't leave them.

A typical day in my life two-and-half years later, my alarm goes off around 6:45. I check my e-mail for loads that I have to pick up and deliver, as I am a truck driver now. I wake and up at 7:15. As my wife, Trelinda, is assisting them getting dressed, I make breakfast. It typically consists of fruit, cereal, and yogurt. I then make and lunch, and I drop them off at school by 8:45. Back at home at 9:00, I jump out of the car and into the truck, where I begin my

1 workday, while delivering my scheduled deliveries. 2 Monday at 11:00 a.m., Dr. Beyrl, my therapist, calls me for a 30-minute check-in to make sure I'm staying on top 3 of my gambling addiction and seeing my mental state. 4 Around -- around 1:00, I go to the Barbara Murphy 5 Community Resource Center and check in with the volunteer 6 7 staff. And we hand out hot meals every day, Monday Around 2:00 I get back on the road and I 8 through Friday. 9 drive my truck. 10 On Mondays I have class for my nonprofit management certificate from the University of Chicago from 5:00 to 11 12 Trelinda usually picks up the kids. The remaining 13 days of the week, besides Monday, I pick them up. 14 after class, I do bath duties, I put them, 15 in bed, then Trelinda and I catch up, I upload my delivery receipts, and I wind down for bed. 16 17 So as you see, Your Honor, my life is totally changed, and I ask the Court's mercy, and allow me to do 18 19 home confinement while I pay full restitution to the 2.0 Any court fines that are placed on me I will 2.1 make sure they're paid. I am now gainfully employed, no 22 longer in the music business, and I will continue my 23 gambling therapy for the rest of my life because it's 24 something that I found that I can't handle by myself, 25 when I thought I had any control. I want to be able to

share my story with others and change their life in a 2 positive manner because I've seen both sides of the fence. I take full responsibility for the crimes I 3 committed, and I would like to show the world the 4 rehabilitated Romel and be there as a father for my 5 children, which is something that I didn't have growing 6 7 I want to pay the victims every penny. And with my 8 family, my brother and sister -- my sister's in the 9 courtroom -- we have put a plan that within 18 months 10 every penny will be paid for the loss, and we've already started by making a \$50,000 restitution payment this 11 12 month. Thank you, Court, and I apologize. 13 THE COURT: Thank you, Mr. Murphy. 14 Mr. Steinback, I'm happy to hear from you now. 15 MR. STEINBACK: Thank you, Your Honor. Honor, would it be all right if I moved a little bit 16 farther down on the bench here? 17 18 THE COURT: Certainly. You can sit wherever 19 you wish at that table.

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Thank you. While I don't MR. STEINBACK: necessarily think it's true, everybody tells me I turn on the television too loud and that my hearing is getting worse, and so if I get closer to you, I can hear what the Court has to say. Thank you.

I know we're going to take up issues concerning my

1 shortcomings and failures, but I think while everyone is here, I want to begin by apologizing for the 2 inconveniences, administrative costs, and the 3 difficulties from the standpoint of precious judicial 4 5 resources expended, and also --Mr. Steinback, I would just as soon 6 THE COURT: 7 I want to assure Mr. Murphy that any skip this. 8 shortcomings of yours has nothing to do with his 9 sentencing, is not going to affect my ruling in any way, 10 and I think it's inappropriate for us to talk about it in 11 his sentencing hearing, so let's move on. 12 MR. STEINBACK: Very well. Your Honor, in 13 Mr. Murphy we have a 43-year-old father/husband of two 14 and -- father of two small children, ages six and three; 15 a wonderfully supportive wife, who is not here because 16 she's home with the children. One of the two siblings 17 with whom Romel is closest is a sister, Debra Simmons, is present in court, sitting in the pew on this side of the 18 19 courthouse -- courtroom. 20 Rarely, Your Honor, do I ever reference anything 2.1 filed by the government as a basis in which to begin 22 arguments or presentations with respect to mitigation, 23 but in this instance, I don't disagree and neither does

misrepresentations, lies, deceptions, and thefts that

Romel Murphy disagree with the variety of

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went on over the course of the period of time described in the indictment, and, in all candor, had gone on before then. All of that has been elaborated, not just in the government's position paper and in its vigorous opposition to any downward variance, but also described, as Your Honor is well familiar, in nine pages in the presentence report, which is incredibly comprehensive.

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The first contact that I had, Your Honor, with Romel Murphy was late January of 2019. He called. He advised me that he had been contacted by one of the people he was doing business with, but that individual had been contacted by a government investigator. And he wanted me, in no uncertain terms, to reach out to someone in authority who was involved in the government's investigation, arrange to meet that individual or those individuals, and do that so that he could admit, confess, his wrongdoing. The enormity of the guilty conscious that he felt then, in some ways, unburdened himself with that confession.

It is the interview reflected in paragraph 48, page 15 of the presentence report, the one on February 26, 2019, where that happened, where an agent, a case agent, present in court today, together with other agents, met in my den at my home; and there and then, about a year or so before any charges were ever brought,

without promise of anything, Romel fessed up. Now, all the details were not discussed. All the details were not discussed by Romel, but he corroborated, confirmed, and admitted to this fraud. He did not minimize. He did not offer any obfuscation. He simply said, "I did these things." The presentence report says he corroborated the information, and I just simply would add to that description that he confessed outright.

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Now, I want to underscore that it is -- it is rare, I think, that an individual seeks out and attempts to foster an arrangement in which he confesses, in which he -- that's the first and only thing he asked for me to do. And that -- when anyone discusses his acceptance of responsibility from the beginning, it should be noted that this was his effort, his desire to organize this meeting that caused it to happen. And the investigators were kind enough to come into my home, Romel came there, and the interview ensued.

And beyond the confession of what was known, there were other details that were very painful for Romel to get into, shameful, inexcusable in his mind and I'm certain in everyone's mind, including the fact that when he ran out of his money, he began to take his wife's savings. In the presentence report, it talks about a hundred thousand dollars, and that's about what it was.

Not all at one time, a thousand here, 3,000 there, until a hundred thousand was gone. Every penny of which went into the riverboat casino, at a place called the Horseshoe in and around Hammond, Indiana.

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And it has been from that point until his eventual guilty plea in early 2020 that Romel has continued to adhere to his commitment to plead guilty. And he has pled guilty, and he has done so without wavering and without ever making any other decision but to do so.

I emphasize this also because, while there is nothing I can do about when the government determines that it is going to begin to prepare, it was not anything about what Romel did which prompted the government to prepare for trial on Count 4, the count to which he pled. Doubtless, the prosecutor began to prepare, and once deciding to do that, it is exclusively, as I read the law, the government's determination not to give that extra point, but it was not based on any unwillingness on Romel's part to plead guilty. The hang-up had nothing to do with this count. The hang-up, as referenced in the previous versions, had to do with the inclusion of another count that ultimately -- from the beginning we contended Mr. Murphy was not quilty of. And I had no intention of pleading him to that count, and it took a while for us to work through that. Ultimately, the

government did or will dismiss that count. Not as part of a plea bargain. Because we hashed it out, and it took time.

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Now, Your Honor, there are people in each of our lives who make huge differences. In Romel's life it was his mother, Barbara Murphy. Barbara is referred to as his best friend in the presentence report, but she was She was Romel's polestar. even more than that. She was When he fell down, she the person there when he cried. lifted him up. When he needed quidance, she quided him. When he needed spiritual understanding, she took him to When he needed -- anything that troubled him, church. she was there by his side. She shepherded him away from an abusive father. She was there for him until, tragically, an untimely death took her at the age of 47, at which time Romel was 19 -- 19, not quite 20. relatively fragile time for him, a tragic loss, and one that caused him to spiral out of control. It is not coincidental that upon his mother's extreme illness that he began to do things that he had not done as a younger boy, as a high school student, but only as he approached 19 and 20.

It was 20 when he first walked into a casino. He had been tutored on gambling from his father. While his mother was always there for the kind of advice that one

would hope that a parent would give a child about right and wrong, good and bad, support, the most that Romel could ever hope to receive from his dad was a tip on the winners for the next horse race, and that's something that the father himself wrote in his letter. It is a sad and difficult circumstance, certainly not unique, but unique in Romel's life, because the casino became an outlet for Romel, somewhere where he could deal with things that he couldn't deal with outside of that place. The casino was a place for Romel to find some modest sense of importance, some sense of stature for a few moments, while the roulette wheel was spinning and the ball hadn't hit into the number finally and everyone was looking at him and he seemed somehow to have an elevated status; and then he'd lose.

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The offense here, Your Honor, is confined by the charges in the indictment, but the gambling, as reflected in the presentence report, went on throughout the entirety of Mr. Murphy's life, from 19 or 20 all the way until he recognized the self-destructive and near suicidal ways that he was thinking and sought some help, recognizing that he had a problem he could not deal with.

The government makes a point of the fact that there was a fraud, and another fraud, and another fraud, and that these just became bigger frauds as a function of a

fraudster who's on the con trying to sell things that don't exist, or set up a shop, vanish, and then get some money. This was not a series of those kinds of frauds or phony stock arrangements. They were the kinds of things that build up from small to big. All of these crimes, all of these thefts, these identity issues, these bank checks, these bad bank fraud matters, every single one of them was an outgrowth of his efforts to get money to continue to gamble.

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He didn't wake up at the age of 39 and become a gambling, pathological, compulsive addict. That's not It was a longstanding and ongoing battle. what happened. And for the longest time, he did not recognize it as a He saw it as solutions to problems. problem. Не believed that going to a casino, chasing his losses, would obtain the monies that were necessary just around the corner to catch up with everyone. Sadly, and unfortunately, that never works. The casinos mathematically, statistically, cannot be beaten. No one ever does unless they happen to go in once, get lucky, and leave.

There was a reference in the opposition, the resistance to a downward variance, that Mr. Murphy did this for entertainment and he did so using monies from other people, not his own. I'm curious as to where that

argument's basis is found, because everything, literally everything, he ever got his hands on -- whether his, someone else's, his wife's -- all went down the drain in one casino; and then when he banned himself from that place and in that state, he found another in a little town called Rosemont, a great big casino there in Illinois where he wasn't banned. The pathology didn't go away just because he banned himself from a place in Indiana, and neither did the casinos. They were only too happy to take his money, and they did. And as stated in the presentence report, in some years as much as \$300,000 The \$52,000 to which the government refers in losses. that he earned in gross pay in 2018 was a drop in that bucket. 100,000 he took from his wife was likewise a drop in that bucket. So were all the monies from individuals like the gentleman who was here speaking today, and still is. Those monies were obtained fraudulently or by misrepresentation, or sometimes in some other cases he actually had the deal going, actually would have earned the commission, but spent the commission, and then took the money for the performer and used it to go gamble, trying to chase the losses from the last loss; and the performer wound up, therefore, never getting their money and the performance never happened. These are the kinds of patterns that occurred throughout

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his life, and they have haunted and, as in Mr. Murphy's words, come very close -- perilously close to destroying him.

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There were so many lies that his life was comprised of just at home. There's reference in paragraphs 122 or 124 of the presentence report to a car payment that's being made, that's still being made, based on a repossessed vehicle that Romel had repossessed in 2018. He's still paying on that car. He just doesn't have it. When it was repossessed, he told his wife it was stolen. Another lie he'd have to live with. When he wasn't paying rent, his biggest fear was that his wife would be home from work, the landlord would come by, and she would find out that they were on their way to being evicted. None of those things fall into the category of entertainment, nor do they fall into the category of using other people's money. He used all of his, then a huge deal of his wife's, and everyone else with whom he came into contact. And his business was not illusory. Replete in the presentence report are references to people who did business with Romel and had actually had successful performances go on at certain venues, and that's why they continued to call him. It's a reputation he developed and then destroyed.

because that business isn't good for him. There's too much money that comes in at one time, and it's dangerous for him to have that kind of money, because he will always be an addict, Your Honor. It's not that he was one and today he's not. He will be recovering for the rest of his life, and that's why these daily -- or rather weekly meetings with his psychologist are critical.

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The government makes a point that they have a report from a psychologist, but they don't have all the dates of his attendance. Well, there is an unrebutted report of an expert, and if the government had any doubts at any time, they could have simply asked me, and I would have been happy to make him available to whatever expert they There has been no challenge to the validity of chose. that report until today. And I think it's not just too late, I think it is unwarranted. The number of the person who was there would have been happy to speak with the government any time they chose. We would have been happy to provide a waiver so that they could access anything they wanted.

There is nothing about his being treated that has been in any way kept a secret. They know who. They know where. We've told them when. And not just that, Your Honor, but when you look at what has happened over the lifetime of this individual, you will see -- and the

government has been very, very capable in pointing out, as has the presentence report -- the criminal history; and that even while on supervision, having just been released, another offense has been committed. And it's not coincidental, Your Honor, that in the government's own memo, they identify where it was that he was arrested. In a casino.

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So why now have there been no new arrests, no new offenses, nothing new since two-and-a-half years ago?

What happened that changes that? It certainly wasn't the incarceration that deterred him. It certainly wasn't the supervision he was on. It was the intervention of a doctor who began to treat him. And it was his willingness and openness to that treatment and to recognize his failures, shortcomings, and the pathology that is this gambling disorder.

We -- the doctor mentions in her report about the American Psychiatric Academy and its DSM-V and these criteria used in the DSM-V. And in looking at that, that DSM number changes from -- the first time I ever looked at it, it was DSM-I. It's now DSM-V. It goes from III, to III and a half, and so on. And at V, and I believe back in IV, the gambling compulsion was regarded far more seriously by a -- a universal psychiatric evaluation manual that is the bible of psychiatry. And it

1 recognized -- recognizes gambling pathology as an illness, a disease, every bit as serious as cancer, 2 3 because, like cancer, which eats away at the person who is suffering from it, gambling pathology and its 4 5 compulsive components eats away at that individual. as surely as that cancer is going to ultimately get you, 6 7 you are going to lose everything: Your liberty, your business, your family -- which he was on the precipice of 8 9 having lost -- your car, your home, everything that you 10 have, until you no longer feel that you are worthy of 11 And the only thing you have left to decide is whether your depression is such that it is better to end 12 13 your life than to continue on this way. It is a 14 nightmare that continues to grow because of its 15 irrational, illogical, rearrangement of priorities, 16 that things like obligation, family, commitment, all of 17 those things, job, they all become reduced to a footnote when contrasted with the urge to gamble. 18 That urge choking the reason -- one judge said "hijacking the brain 19 20 so that it no longer thinks properly." 2.1 And, ultimately, what it has left this individual is 22 filled with quilt, shame, and depression. And there is 23 no bottom to the pit of gambling compulsion. You just 24 keep falling deeper in, and there's no graceful exit. 25 There is only a willingness to recognize that you are

messed up, that you need help. And to overcome the fear of stopping that which you are accustomed to and changing it, making real change, so that you have the courage to find a way out. And that is the reason why this individual has not violated any of the conditions of his release. Not a single blemish of any kind. Not an interaction with a law enforcement officer. Nothing. And that is -- there is no time in his adult life where that can be said, and the only explanation is the assistance that he voluntarily sought to obtain.

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Now, Your Honor, there are other matters which I would like to speak to, address briefly. One of those matters has to do with other aspects of acceptance of responsibility. An individual who not only comes forward and volunteers his wrongdoing at the first opportunity, who finds -- who quits the business that he was in that enabled this kind of misconduct, who remains violation free in a lifetime that has otherwise been filled with nothing but violations, and who not only continues to participate in therapy weekly but to educate himself on Monday nights, the only time that he can squeeze that in.

And lastly -- and somehow, again, the government in its opposition to our downward variance says that restitution should not be a factor considered in connection with that request. And there's an argument

there that confounds me some, that if restitution by itself were something that were sufficient to warrant downward variance, then only the rich would be in a position to buy their way out. Now, I don't think that's true, but we're not talking about the rich here. We're talking about an individual who now has an outstanding job as a truck driver, makes a good hourly wage. And he is able, because all of his loads are close to the area where he lives, to come home every night, be part of his children's lives, stop off at the community center, do what he does there best, which is mentor young people who are -- would have gone his way or some other way worse.

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About that community center, yes, it's true, that it began after his self-awareness. Yes, it's true, it began a year ago. But it is no less important or significant that this individual did something that no one in the history of that neighborhood has ever done. Washington Park is second in neighborhoods that are underserved only to Woodlawn in Chicago. And Woodlawn is a riot of gunfire and gang violence. And Washington Park is just behind it. There is not a time that you can drive through that neighborhood for -- for any -- for any less than five minutes and not hear gunshots. And the -- the people he mentors have not only done well under his mentoring, but they have decided to go to school, and

some of those people have written Your Honor. They've determined that there is something to do besides continue to kickback with the gang.

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The people that he feeds, it's not like he's got this money, he's made this great largesse to the place, and watches other people work. He feeds the poor. He solicits the money from the corporations in and around the country that are willing to fund these places, every single day, to find that money so that people can be fed, people can be clothed, so that there are ways to access schooling, advanced education.

He actually has been involved actively in gang fight mediation, something that was expressly recognized by the State's Attorney of Cook County. And I can tell Your Honor that that letter would not have lightly been written, because she is one very tough two-fisted And she is wholly supportive and has given prosecutor. the resources of her office to that community center, as have the Chicago Police Department, because it cuts down crime; because rather than having shootouts, they have And right in the center of them is Romel mediations. Murphy. And to say that that is anything less so because he's come to recognize his need to contribute and desire to give back, and the fact that he has the ability to do so and that that comes late, does not mean that it should be ignored.

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I don't have this quote exactly, but Justice

Frankfurter had said "Wisdom ofttimes never comes. One ought not reject it merely because it comes late." There is great wisdom in this young man, Your Honor, and there are great things that he can do with his life. He has looked forward to growth, not theft. He has looked to overcome the fear of dealing head-on with these problems, and will continue to do so whatever it is that Your Honor ultimately determines should be his fate from today.

There is a quote consistent with something I said from a person by the name of Maslow, who I think is famous for some scale of something in the 20th Century.

THE COURT: Maslow's hierarchy of needs.

MR. STEINBACK: I'm sorry, Your Honor?

THE COURT: Maslow's hierarchy of needs.

MR. STEINBACK: Thank you. Maslow had said,

"One can choose to go back or forward toward growth, but
both must be chosen again and again, while fear must be
overcome again and again." Every day of Romel Murphy's
life he has to choose to continue on this path of change.
He has to resist that urge. He has to continue to
contribute. He has talked about a day in his life. But
even when I was his age -- some 27 or so years ago -- I
don't think I could have managed driving 300 miles,

offloading those loads that are given to him, making sure his children get to school, making sure he gets to the community center to feed or mentor or mediate, get back home in time to put the children to bed, and then have dinner and discuss life with his wife, and start the whole thing over again, with two single except -- two other exceptions: One, the Monday treatments, which are absolutely critical to this individual; and, two, his effort at educating himself so that he can be better at what he does, and better himself. And none of those things go toward making more money. They go towards making him a better human being. Yes, it is compensatory. Yes, it is an effort, all-out, to change that which he has been to become that which he wants to But he has come so far. He has done so much. And he is in every way imaginable willing to continue to do so.

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I had advised the government that a \$50,000 payment was going to be forthcoming, that it was coming from Mr. Murphy's wife's retirement account. The hoops were jumped through, the penalties were paid, and the 50,000 did come. And I'm certain that the government will attest, because I know that we discussed it, that indeed a \$50,000 payment towards restitution was made. Now, that in no way should be construed as attempting to buy

his way out of prison. I wouldn't think that that would cause Your Honor to think prison is now, therefore, inappropriate. It's not -- the gesture was not for that purpose. It was so that he could finally get some money to the people who he put off for so many years, lied to for so many years. Then maybe one day he could actually face them without shame.

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And unlike the reference here about those who are wealthy being able to buy their way out, it would take a village for Romel Murphy to be able to pay this down. His sister is here. She was a ranking member of the Air Force; now has a prominent job in government. make a fortune but is willing to pay whatever she can, and a commitment of \$20,000 has been made. He has a brother -- actually, a half-brother -- who has likewise said, "You show me that you are continuing on this path, and I will help you." He's a CEO of a major cooperation. I have spoken with him briefly, he's called me, and he has verified that. His wife has an outstanding job. When the government talks about Romel Murphy having a positive net worth, two things come to mind: One, almost all of it is his wife's income; and, two, when you subtract the \$411,000 in restitution, or whatever ultimate amount Your Honor determines to be appropriate, any sense that there's a positive net worth becomes

elusory. It's gone. It's wiped out. And that's a real debt, as everybody knows. And it's mandatory. He has sworn that he will pay it. He has paid as much as he can to date and will continue to do so. He says he can get this done in two years. I hazard to use this word, I would not bet against him.

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Your Honor, I don't say that making restitution in \$50,000, and ultimately in two years in 3' or \$400,000, is by itself a basis for a downward variance. I don't say that an early confession by itself well before charges were ever brought, with no promises, is by itself sufficient for a downward variance. And I don't say that the willing -- the voluntary cessation of the very behavior that created and engendered all of this by itself is sufficient to warrant a downward variance. Nor do I say that the pursuit on an ongoing basis of the treatment necessary to ensure that he not go back by itself is a basis for a downward variance. But I do tell Your Honor that when you combine that with the community efforts that he is immersed in that entail real risk to him, and as verified by serious people who do not hand out compliments readily, you have in combination a compelling reason why a quideline sentence is not appropriate here.

And the government says that the guideline policy

says that gambling pathology should not be considered, but the guidelines in every circuit, including the Eighth, have long since been held only to be advisory, the policies likewise. The cases are legion about downward departures, downward variances for alcoholism, for drug addiction, and for the disabilities that he They are no different, and they cause the same suffers. kind of ultimate destruction, and in -- all of the harm that was caused to this gentleman here and the various individuals identified, to which we freely admit, no one was harmed more by this behavior than Romel Murphy He was, as I say, on the precipice of losing himself. everything, including the strong consideration of his life.

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I have one other observation I ask Your Honor to bear with me on. It has to do with time. It has to do with something that I'm going through now, and it has to do with something I've seen with my own eyes, and I believe has some application to this proceeding. Time is something I became acutely aware of at the end of my father's life. He had battled multiple myeloma for eleven years and had a series of remissions, but at the end, a 6-foot strapping man was reduced to 5-foot-4 inches and 103 pounds. And he said to me three days before he died, "Son, you know, the only thing we have is

time," which I thought was bizarre when he said it,
because he was near death and he knew it, and I knew it.

And the only complaint he ever made, and it was just one,
was "I wish I had just a little more of it."

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Now I've got two brothers that are battling cancer and a brother-in-law with metastatic pancreatic cancer. My baby brother has the same thing my father has, with one exception. He is where my dad was after two years, and it took my dad ten years to get to, and nobody says he's going to make it to the end of the year. And I can see the hope draining from his eyes as his time runs out.

Time is the most precious thing we have, and health is right there with it. This individual has both. Your Honor has immense discretion. The discretion to be punitive, and who could argue with you? And the discretion to be merciful. And in this instance, for the reasons I've enumerated, I pray that Your Honor temper justice with mercy and be as lenient as the Court's conscience will permit on this individual. And I thank Your Honor for giving me the time and hearing me out.

THE COURT: Thank you, Mr. Steinback.

In arriving at a sentence that is sufficient but not greater than necessary to achieve the goals of sentencing, I have considered all the factors at Title 18 United States Code Section 3553(a) even if I do not

mention each of them in my comments here today.

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Turning to the defendant's offense conduct, the defendant was involved roughly from about the fall of 2017 to the spring of 2019 in a scheme to defraud people in the entertainment business by false pretenses and lies regarding his ability to book and to arrange for entertainment and entertainment venues. In the process of that, the defendant victimized 21 different people, 15 of whom are owed restitution as a result of his conduct here.

The defendant's fraud was ongoing. It involved the fabrication of documents. It involved misrepresentations in multiple different ways. Troubling to the Court in particular is the conduct occurred after the defendant was interviewed by law enforcement officers. Defendant, through his counsel, is asserting and arguing that his voluntary decision to speak with law enforcement officers in February of 2019 is an indication of his extraordinary acceptance of responsibility for which he should be awarded with some type of downward variance. that, in the spring of 2019, the defendant defrauded his 21st victim by engaging and continuing to engage in the exact same type of fraud that he had engaged in up until that point. That concerns me. He knew he was under investigation, and it was not a deterrent to him to

continue the fraud beyond that date.

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The aggravating nature of his fraud, the number of victims, the sophisticated means, the amount of money involved, his managerial role, all of which are taken into account in the guidelines, more or less -- I say "more or less" because, for example, the number of victims, the defendant gets a 2-level enhancement for ten or more victims. Here, we have 21 victims. There's no greater increase. The loss amount is toward the top end of the range of 250 to 550, or at least over the middle of it. But by and large I find that the guidelines reflect the seriousness of his criminal conduct adequately.

Turning to the defendant's history and characteristics, the defendant is 43 years old, he's married, and he has two dependent children. He grew up without a father in his life largely, it appears. His father was present from time to time and, to the extent he was present, introduced him into gambling. The defendant indicates that he grew up in poverty, but his mother always loved him and otherwise took care of him. And the success of his siblings suggest that whatever disadvantages the defendant had as a child, that did not necessarily need to influence his life of criminal conduct here.

The defendant has no mental health history or emotional concerns other than the gambling addiction that he reports and is supported in part by the defendant's letter from his treatment provider that appears at document number 50, pages 1 and 2. It is not terribly informative to the Court. It does not give a lot of information to the Court about his gambling addiction, but it does support, and it has not been rebutted, that he does have a gambling addiction in this instance here. The probation office was unable to obtain copies of documentation and counseling the defendant received. Ι recognize that the government also did not seek it, but the defendant was put on notice at paragraph 110 of the presentence report that the records were not available, also at 109. And to the extent that the defendant is urging his gambling addiction as a basis for downward variance, the burden should be on the defendant to come forward with the documentation to persuade the Court of the nature and extent of his addiction problem. Nevertheless, I do find the defendant has some type of gambling addiction. Exactly what it is, how severe it is, how long it's been going on, I don't have a lot of information on. The defendant has graduated from high school. Не

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He has employment

has some college education as well.

history that -- it appears that he has been largely employed in various capacities; right now as a truck driver in which he is earning some funds, although not a lot, but it sounds like it's steady income for the defendant. And he's also involved in charity work that I do note began after his indictment in this case, but I agree with Mr. Steinback. Whenever started, the fact that he's engaged in charity work that has been supported by the letters of support is a fact that the Court will take into account in determining the defendant's sentence.

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The defendant's criminal history troubles me, and it troubles me greatly, and for this reason. The defendant -- the defendant's criminal history shows a consistent pattern of fraudulent conduct. Whatever the motive, whatever the underlying cause -- and perhaps that's gambling addiction -- the fact remains the defendant has engaged in fraudulent conduct consistently in a manner that suggests to this Court a very high likelihood of reoffending. His first conviction was in 2003. The loss amount that he defrauded people of in that case was around \$40,000. The Court sentenced him to 7 months in prison. There was one victim.

The conviction in 2005 -- again, these are all federal felony fraud convictions. In 2005, the loss

amount was about \$35,000. The defendant received an 18-month sentence, and there was one victim involved. In 2007, his conviction was involving a loss amount of only \$2,500. The defendant received a 54-month sentence in that case. And again, there was one victim involved. And then in this case, we have a fraud involving 21 victims, \$410,000 in loss involved.

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The defendant's performance under supervision by other federal courts has been abysmal to say the least. The defendant has violated conditions of supervision by leaving the jurisdiction, failing to report to his probation officer, failing to submit monthly written reports, lying to his probation officer, failing to follow instructions, failing to work regularly, failing to notify his probation officer of a change in residence or employment, failing to permit probation officers to visit him, failing to pay restitution.

While in the Bureau of Prisons, the defendant has been sanctioned multiple times. He was sanctioned during his first term of incarceration between 2003 and 2004 for possessing property belonging to another inmate twice. He was sanctioned the second time he was incarcerated between 2005 and 2006, or during his supervised release revocations in those cases, for phone abuse twice, interfering with taking count twice, and possession of an

unauthorized item. And he was sanctioned most recently in his period of incarceration for fighting within the Bureau of Prisons. The defendant appears to have utter disregard for the law and for regulations, for rules that he has to abide by.

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I note these violations are particularly informative to the Court because they have nothing to do with gambling. The defendant cannot blame the violations of his supervision on his gambling addiction. He cannot blame on his addiction to gambling his lying to probation officers, failing to allow them to visit him, or of the other violations listed there. What that tells me is that this is not a case where the defendant only violates the rules because of some uncontrolled gambling addiction. What it tells me is this is a defendant who violates the rules because he has no regard for the rules by which society conducts itself.

Turning specifically to the grounds raised by the defendant for a downward variance, the paying of restitution, I find that to be a mitigating factor, because I have too many defendants who owe restitution who come into court months, sometimes years after they've been charged and they haven't bothered to pay a single cent toward their victims. In this case, the defendant has made an effort, albeit not with his own funds, but

has made an effort to at least pay down some of the debt he owes to his victims, and I find that to be appropriate.

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I agree with the government, there is a point at which there's a danger that to vary downward on a sentence for somebody who pays restitution begins to look like a defendant paying himself out of prison. I don't think that's this case. This is not a wealthy defendant who is paying off his restitution in full. It's not a case where I think there's a danger that anybody is going to look at this and conclude that his effort to pay at least some of the restitution, and a significant amount of restitution he owes, falls in that category.

The alleged confession that he made and reached out to law enforcement I find not to be mitigating because the defendant continued the criminal conduct after it.

His voluntary cessation of his behavior, referring to his gambling, that led to his criminal conduct here I find to be somewhat mitigating. Again, I have a paucity of information on which to rely to conclude that he has a gambling addiction, the extent of it, and the extent to which his treatment has changed his behavior, but I find that Mr. Steinback has some merit to his argument that there is a change in his behavior in the last two-and-half years that could be attributed to his effort

to obtain treatment for his gambling addiction. His pursuit of that addiction treatment, again, falls in the same category and I find it somewhat mitigating.

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And I find somewhat mitigating his community efforts, charity efforts, that he's engaged in since he's been indicted in this case merits some consideration in arriving at a sentence in this case.

That said -- gentlemen, you may sit down. I'm sorry, I did not look up to see that you were standing. You may sit down. There's no need for you to stand.

That said, in trying to arrive at a sentence that is sufficient but not greater than necessary to achieve the goals of sentencing, I have to consider all the goals of sentencing, and those include a number of things, including imposing a sentence sufficiently severe to deter the defendant from committing a crime like this in the future; a sentence sufficiently severe to deter others in the defendant's position from committing this type of crime; a sentence sufficiently severe to protect the community from the defendant in committing future crimes; and a sentence sufficiently severe to reflect the seriousness of the conduct in which the defendant has engaged.

Against the mitigating factors I've identified here,

I find that aggravating factors of the number of victims

and the recidivist nature of the defendant's conduct and his very -- very poor performance under supervision, which reflects a disregard for the law and rules, in my mind, balance out any mitigating factors, such that a downward variance is not appropriate.

for his charity in recommending

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I commend

the Court vary downward. And I'm not ignoring you,

and your recommendation here. But I, as the
judge, have to consider a number of different factors and
not just the victim's point of view here. And given this
defendant's pattern of fraudulent conduct that has
resulted in this case, with 21 victims and almost a half
a million dollars worth of loss, I -- I find that a
sentence within that advisory guideline range is
appropriate.

That said, I -- I'm not going to adopt the government's request at a top -- or toward the top of the guideline range sentence here. I find the mitigating factors raised by the defense are sufficient that a sentence at the bottom of the advisory guideline range will be sufficient but not greater than necessary to achieve the goals of sentencing. 77 months is a long time. I would just note that had the defendant entered a timely guilty plea and had he no criminal history, he would be looking at a range of 46 to 57 months. So the

range we're looking at here is driven at least in part by the defendant's pattern of criminal conduct that is identical in nature, fraudulent, as the conduct here, his repeated violations of supervision by other courts, and his untimely guilty plea in this case for whatever reason.

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So having considered all the factors under Title 18
United States Code Section 3553(a), it is the judgment of
this Court, Mr. Murphy, that you are hereby committed to
the custody of the Bureau of Prisons to be imprisoned for
a term of 77 months. It is recommended that you be
designated to a Bureau of Prisons facility in close
proximity to your family commensurate with your security
and custody classification needs.

Upon release from imprisonment, you will be placed on supervised release for a term of 3 years. While on supervised release, you must comply with the following mandatory conditions: You must not commit another federal, state, or local crime; you must not unlawfully use or possess a controlled substance; and you must cooperate in the collection of a DNA sample as directed by your probation officer.

In addition, you must comply with the standard conditions of supervision set out in my judgment order, along with all the special conditions at paragraphs 138

1 through 149 in the presentence report. 2 It is ordered that you must pay to the United States 3 a special assessment of \$100, which is due immediately. I note that you did pay that on September 23, 2021, and 4 the record will so reflect. I find given the amount of 5 restitution you owe that you do not have the ability to 6 7 pay a fine, and so no fine will be imposed. It is ordered that you make restitution in the 8 9 amount of \$410,908.23 to the victims in this case. It is 10 ordered payable as follows: \$147,223.23; 11 \$47,160; \$17,000; PayPal, 12 \$7,600; \$15,000; \$52,525; 13 \$5,525; \$7,500; -- \$13,000; 14 \$12,000; 15 \$24,100; \$32,500; 16 \$15,000; \$15,000; and \$3,300. 17 This entire amount is payable immediately and the 18 19 balance is due -- well, the amount is owed immediately 2.0 and ordered payable immediately. Well, given the defendant's financial condition, I find that the amount 2.1 22 payable immediately is the \$50,000. All other remaining 23 balance will be payable due to a payment schedule imposed 24 by the Court. All payments must be made to the Clerk of 25 Court for the Northern District of Iowa for distribution

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    to the victims in this case. The restitution will be
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    distributed on a pro rata basis. If any of your
    court-ordered financial obligations are still owed while
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    you are incarcerated, you must make monthly payments in
 4
    accordance with the Bureau of Prisons Financial
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    Responsibility Program. The amount of monthly payments
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    will not exceed 50 percent of the funds available to you
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    through institution or noninstitution resources and will
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    be at least $25 per quarter. If you still owe any
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    portion of the financial obligations at the time of
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    release from imprisonment, you must pay it as a condition
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    of supervision, and the United States Probation Office
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    will pursue collection of that amount due pursuant to a
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    payment schedule approved by me. You must notify the
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    United States Attorney for the Northern District of Iowa
    within 30 days of any change of your mailing or residence
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    address that occurs while any portion of the financial
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    obligations remain unpaid. I find you do not have the
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    ability to waive any interest and will waive the interest
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    requirement in this case.
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         Ms. Lundquist, there remains outstanding Counts 1,
    2, 3, 5, 6 and 7.
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              MS. LUNDQUIST:
                              Yes, Your Honor.
                                                 The
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    government moves for dismissal of those counts.
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              THE COURT:
                           The Court grants that motion, so
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Counts 1, 2, 3, 5, 6 and 7 are dismissed.

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Mr. Murphy, let me talk to you about the privilege First of all, you need to understand of self-surrender. it is a privilege. I could order your immediate incarceration. I am going to grant you the privilege of You have two options, but I want to talk self-surrender. to you about the ramifications of this privilege. first option is to surrender to the United States Marshal This would be in the Northern District of in Illinois. Illinois at a time determined by me. I would probably set that out for approximately two weeks. If you surrender to that U.S. Marshals Office, they will then be responsible for transporting you -- transporting you to whatever facility the Bureau of Prisons designates for you to serve your time.

If -- the other option is you can surrender directly to the Bureau of Prisons facility. Now, I have recommended the Bureau of Prisons designate you to a facility close to your family, but I don't know where they're going to designate you. It could be anywhere in the country, and if you choose that option, you're going to have to get yourself there on your own dime.

If you fail to surrender as ordered either to the U.S. Marshals or to the Bureau of Prisons, whichever option you choose, if you fail to surrender on time and

on the date, that could be a separate criminal offense. And if you were convicted of that offense, you could be sentenced to an additional period of imprisonment and fined. I will tell you that this U.S. Attorney's Office has been very aggressive in prosecuting people who have violated and abused the privilege of self-surrender and have gone after people, charging them with failing to do so. So if you are going to choose this privilege of self-surrender, you better make sure you do it and you show up on time.

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There are some benefits to you having the privilege of self-surrender. As you know from the Bureau of Prisons, they classify you on your security classification rating. If I allow you the privilege of self-surrender and you surrender on time, the Bureau of Prisons will automatically decrease your security rating, which will make you eligible for a lower level security As you know, those can be much better places facility. And, in fact, some are just converted to do your time. private colleges, without walls and without barbed wire. So there is that privilege. There is the privilege -- or the benefit, not privilege -- the benefit as well of having some additional time to get your affairs in order. The downside is, if you fail to show up when you are supposed to or you violate any of the conditions of

1 supervision between now and the time that you surrender, 2 you could be subject to immediate arrest, you could be 3 subject to additional charges, and on top of that, the Bureau of Prisons will not only not reduce your security 4 5 classification rating, but will immediately increase your security classification rating, resulting in you probably 6 7 doing harder time wherever it is you are going to do 8 time. 9 So I suspect you've spoken with Mr. Steinback about 10 your two options, but why don't you take a few minutes to 11 speak with him. And then, Mr. Steinback, you can let me 12 know which of those two options Mr. Murphy would like to 13 choose. 14 MR. STEINBACK: Your Honor -- I'm sorry. 15 (Whereupon, counsel conferred with the defendant.) 16 THE COURT: I'm sorry, Mr. Steinback, I'm happy 17 to hear from you now. Your Honor, a couple of things. 18 MR. STEINBACK: 19 Does the Court entertain requests? I understand that if 2.0 the Court were to make a recommendation, it's merely 2.1 Ultimately, the Bureau of Prisons designates or 22 makes that decision. But if the Court were to entertain 23 such a request, we would respectfully request a 24 recommendation of the FPC in Terre Haute, Indiana. 25 Mr. Steinback, I as a practice do THE COURT:

not make a recommendation to the Bureau of Prisons, except under exceptional circumstances, and here's why. It's not that I'm trying to make it hard for an offender, but I visited a lot of federal prisons, I've spoken to Bureau of Prisons facility personnel on numerous occasions, and here's what they tell me. They do their best to honor a judge's recommendation, even at the expense of what they believe might be in the offender's best interest. So if I recommend this facility, they could evaluate your client, evaluate his treatment needs, for example, for gambling, or evaluate the programs programming that might be available and they would place him at a different facility that might be better for him, but because I recommended Terre Haute, they're going to send him to Terre Haute.

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The other complication is, during the COVID crisis here, me recommending a specific facility interferes with the Bureau of Prisons' ability to ensure placement of inmates in facilities that are safe for them. We have outbreaks of COVID in different facilities. And so by making a recommendation, I make it difficult for the Bureau of Prisons to do what they believe is in your client's best interest, taking into account all those factors. And so while I appreciate you requesting that, I'm going to decline making a specific recommendation for

those reasons.

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MR. STEINBACK: I appreciate that, Your Honor. The other request I would ask Your Honor to consider -- again, it's a recommendation, not a mandate by any means. But there's reference in the presentence report to excessive alcohol use while gambling that happened over a long period of time and the benefit that the defendant could have in a residential treatment program. I would like to see whatever counseling he gets -- I know that the residential drug and alcohol program equally applies for people with other disorders, and everyone I've ever spoken with who I've represented has benefited from being part of it, and I think it would put some of his time to good use. I realize it only is available towards the end of a sentence, but nonetheless, I think it valuable here.

THE COURT: I'm happy to recommend the defendant participate in an alcohol treatment program while incarcerated. I am not going to recommend him for the residential drug abuse treatment program, because that is designed for controlled substances and not for alcohol, and so I will recommend alcohol treatment while in custody, and hopefully that addresses your concerns.

Anything else, sir?

MR. STEINBACK: The last comment, is there going to be interest applied to the restitution or is

1 Your Honor willing to waive interest? 2 THE COURT: I announced I was waiving the 3 interest in this case. MR. STEINBACK: Thank you. 4 5 THE COURT: Does your client wish to surrender to the U.S. Marshals in Illinois, or does he wish to 6 7 surrender to the Bureau of Prisons facility? 8 MR. STEINBACK: He wishes to surrender directly 9 to the facility designated. And in that regard, if I 10 could simply offer -- there are two matters. Romel has 11 an MRI scheduled to re-evaluate a little bit of a cloq in 12 a left -- his left ventricle to determine whether a stent 13 That is on November 3rd. may or may not be necessary. 14 And then, if at all possible, he would like to conclude his involvement, at least for several years, with what is 15 16 the single biggest event and feeding of the needy and 17 poor in that area, which is on November 23rd, just in the -- I think it's the Thanksqiving area. 18 Three senior 19 homes, senior citizen homes, the Chicago Police 2.0 Department is involved, and they will be feeding 2.1 approximately a thousand families. And Romel has 22 organized that and is in the midst of making sure it 23 So I would ask Your Honor to please consider happens. 24 those two dates in connection with whatever time you are 25 willing to give Mr. Murphy to surrender.

I'm not going to dictate to the Bureau of Prisons. That is up to them for timing. Historically, it's taken a couple weeks for them to notify, and then another week or two for the surrender. It may or may not work out that your client is available for those matters, but I'm not going to dictate to the Bureau of Prisons their timing.

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So, Mr. Murphy, you must surrender for service of your sentence at the institution designated by the Bureau of Prisons as notified by the United States Marshal. You must keep the United States Marshal informed of your current address and phone number until you have reported to the Bureau of Prisons to serve your sentence. Your failure to report as directed may subject you to additional criminal charges. You will remain on release under the supervision of the United States Probation Office under the same terms and conditions previously imposed until you have reported to the Bureau of Prisons to serve your sentence.

Officer Sanchez raised a question about the restitution here and the loss amount and wanted to make sure we had a clarification. And so, Officer Sanchez, as I understand it -- I'm looking at an e-mail that I received from the government, copied to the defense.

It's dated October 18th, and it has the loss amounts that

I read off when I was announcing the loss amount. on that loss amount -- I'm sorry, that restitution -- you know what, I think my calculation was off. I believe the total that I read off would actually be \$408,908.23. Ms. Lundquist, did you add up the total of that column with that correction to Mr. McDonell? I'm adding it now, Your Honor. MS. LUNDQUIST: THE COURT: Okay. Officer Sanchez, have you had an opportunity to add that up or what are your thoughts? PROBATION OFFICER: Your Honor, when I added up

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the amounts in the e-mail from the U.S. Attorney's Office I got a total of \$414,433.23. And I went back to the victims and found out where there were some of the discrepancies. And it was in those cases where we identified in paragraph 155 of the presentence report that it was to be determined by the AUSA's office. still do have the restitution -- or, I'm sorry, excuse me, the loss amount of \$410.05 -- \$410,582 as identified in paragraph 67 of the report, because that puts in that correct amount of 32,500 for T did go through and add up all of the amounts in the offense conduct again, and I still came to that 410,582 amount. So I apologize for the incorrect amount in paragraph 155 But I do feel that the for

1 restitution amount in paragraph -- or the loss amount in 2 paragraph 57 is correct; would just -- the loss amount here did not total the restitution amount, which does 3 It is slightly higher than what I happen at times. 4 calculated from the attorney's e-mail, and I did use the 5 32.5 for 6 7 All right. Ms. Lundquist? THE COURT: Yes, Your Honor, I have a total 8 MS. LUNDOUIST: 9 amount from the e-mail, including the adjustment to 10 of 414,433.23. The additional 11 amounts, in looking at the top three victims -- the top 12 three amounts, and 13 they do total more than 190,000 based on receipts for 14 sound and advertising, as flagged initially in my 15 resistance to defendant's downward variance. And in 16 further communication with the defense counsel this week, 17 I discussed these additional amounts with him, and he 18 agreed to their inclusions. 19 Give me that total you came up with THE COURT: 20 414,000 what? again. 2.1 I have 414,433.23, Your Honor. MS. LUNDQUIST: 22 MR. STEINBACK: And I confirm that those were 23 the figures that were discussed with me ahead of this 24 proceeding, and I had agreed to them. They were add-ons 25 to our paperwork, but the final numbers were given to the

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    Court, as I understood it.
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                                       Thank you,
              THE COURT: All right.
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    Mr. Steinback, and thank you, Ms. Lundquist.
         So, Officer Sanchez, I think we will be going with
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    that figure of $414,433.23 as the total amount of
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    restitution owed. I recognize that's slightly above the
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    loss amount identified in paragraph 57, but that's not
    unusual in some cases where we have after the fact
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    production of receipts that show collateral consequences
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    of the amount of money that was involved in the direct
    fraud but still resulted in additional losses to the
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    victims in this case.
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         So do you have any concern with that loss amount
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    under that explanation? I'm sorry, with that restitution
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    amount.
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              PROBATION OFFICER:
                                  Your Honor, I apologize,
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    are you asking me?
                           I'm sorry?
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              THE COURT:
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              PROBATION OFFICER: I'm sorry, Your Honor.
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    you asking me?
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                           Yes. Do you have any other
              THE COURT:
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    concerns now?
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              PROBATION OFFICER:
                                   No, that's the number that
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    I came up with as well.
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                           Okay.
              THE COURT:
                                  Very good.
                                               Thank you.
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thank you for getting that clarification.

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All right. Mr. Murphy, let me talk to you -- well, actually, Ms. Lundquist, anything else before I advise
Mr. Murphy of his limited rights to appeal.

MS. LUNDQUIST: No, Your Honor.

THE COURT: Officer Sanchez?

PROBATION OFFICER: No, Your Honor.

THE COURT: And Mr. Steinback?

MR. STEINBACK: No, Your Honor.

THE COURT: All right. Mr. Murphy, let me talk to you, sir, about your limited rights to appeal. plea agreement that you've reached with the government in this case, you agreed to waive your right to appeal except under limited circumstances set forth in that plea agreement, so the appeal rights I'm about to tell you apply only if you believe under the terms of that plea agreement you have the right to appeal. If you are going to appeal, it's going to be to a higher court called the Eighth Circuit Court of Appeals. To appeal to that court, you would have to file a written notice of appeal with the Clerk of Court for the Northern District of Iowa here in Cedar Rapids within the next 14 days. fail to file a written notice of appeal with the clerk in the next 14 days, you give up forever your right to appeal the sentence I've just imposed. If you would like

1 to appeal but you cannot afford the services of an 2 attorney to do so, I would appoint an attorney to 3 represent you on appeal at no expense to you. understand your right to appeal, sir? 4 5 THE DEFENDANT: Yes, Your Honor. 6 THE COURT: Do you have any questions about 7 anything we've done here today, sir? No, Your Honor. 8 THE DEFENDANT: 9 THE COURT: All right. I would like you to go 10 up to the U.S. Marshals in this building on the seventh 11 floor immediately following this hearing. Report in to 12 them and just give them your contact information. 13 will forward that to the U.S. Marshals in Illinois to 14 make sure that they can be in contact with you to make 15 sure that they properly notify you of your designation to 16 the Bureau of Prisons. I don't want to see you get in 17 trouble for not getting there on time because there was a 18 miscommunication in some manner. So if you just go over to the elevator, go up to the seventh floor and come out, 19 2.0 you'll see the US Marshal's Office there. 2.1 THE DEFENDANT: Yes, Your Honor. 22 THE COURT: All right. Anything further, 23 Mr. Steinback? 24 MR. STEINBACK: No, Your Honor. Thank you. 25 All right. THE COURT: Ms. Lundquist?

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               MS. LUNDQUIST: No, Your Honor.
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               THE COURT: Thank you. That concludes this
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    hearing.
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               THE DEFENDANT: Thank you to the courts.
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          (Proceedings concluded at 2:55 p.m.)
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CERTIFICATE

I, Patrice A. Murray, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that at the time and place heretofore indicated, a hearing was held before the Honorable C.J. Williams; that I reported in shorthand and transcribed to the best of my ability the proceedings of said hearing; and that the foregoing transcript is a true record of all proceedings had on the taking of said hearing at the above time and place.

I further certify that I am not related to or employed by any of the parties to this action, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have set my hand this 2nd day of January, 2022.

/s/ Patrice A. Murray
Patrice A. Murray, CSR, RMR, FCRR
Court Reporter
PO Box 10541
Cedar Rapids, Iowa 52410

I certify that the foregoing is a correct copy of the transcript originally filed with the Clerk of Court at docket entry 86, incorporating requested redactions of personal identifiers and any other redactions ordered by the Court, in accordance with Administrative Order 08-AO-0009-P.

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/s/ Patrice A. Murray
Patrice A. Murray, CSR, RPR, RMR, FCRR
United States District Court, NDIA
111 Seventh Avenue S.E., Box 4
Cedar Rapids, Iowa 52401-2101

\$	110 [2] - 17:8, 48:13	250 [2] - 15:16, 47:10	52401 [1] - 1:10
T	111 [3] - 1:10, 1:17, 71:20	26 [2] - 9:3, 26:22	52401-2101 [1] - 71:21
	11:00 [1] - 23:2	27 [1] - 40:24	52410 [2] - 1:24, 71:13
\$10,000 [1] - 14:25	12 [1] - 18:17	29 [1] - 16:18	53 [1] - 5:16
\$100 [2] - 3:7, 56:3	12-level [2] - 8:10, 8:14	2:00 [1] - 23:8	54 [2] - 16:9, 18:16
\$12,000 [1] - 56:14	12/3/21 [1] - 1:21	2:55 [1] - 70:5	54-month [1] - 50:4
\$13,000 [1] - 56:14	121 [1] - 5:19	2B1.1(a)(1) [1] - 8:8	550 [1] - 47:10
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